

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

JAMES HENLEY,	)	
	)	
Plaintiff,	)	Case No. 1:14-cv-1050-JMS-DKL
	)	
vs.	)	
	)	
MARION COUNTY PUBLIC	)	
DEFENDER,	)	
	)	
Defendants.	)	

**Entry Dismissing Complaint and Directing Further Proceedings**

**I.**

The plaintiff's motion to proceed *in forma pauperis* [dkt 2] is **granted**. The assessment of even an initial partial filing fee is not feasible at this time.

**II.**

The complaint is subject to the screening requirement of 28 U.S.C. § 1915A(b). Pursuant to this statute, "[a] complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show that plaintiff is not entitled to relief." *Jones v. Bock*, 549 U.S. 199, 215 (2007).

To satisfy the notice-pleading standard of Rule 8 of the Federal Rules of Civil Procedure, a complaint must provide a "short and plain statement of the claim showing that the pleader is entitled to relief," which is sufficient to provide the defendant with "fair notice" of the claim and its basis. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) and quoting Fed. R. Civ. P. 8(a)(2)). The complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the

court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quotations omitted). Pro se complaints are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Erickson*, 551 U.S. at 94; *Obrecht v. Raemisch*, 517 F.3d 489, 491 n.2 (7th Cir. 2008).

Based on the foregoing screening, the plaintiff’s complaint must be **dismissed**. The plaintiff brings this action pursuant to 42 U.S.C. § 1983, asserting that the defendant, the Marion County Public Defender, failed to provide him a copy of his criminal file and thus thwarted his efforts to pursue post-conviction relief. The plaintiff seeks injunctive relief and damages. But § 1983 does not support any claim against a public defender, as a public defender is not considered a state actor and Marion County Public Defender Agency is not considered a “person” for purposes of 42 U.S.C. § 1983. *See Polk County v. Dodson*, 454 U.S. 312, 324 (1981) (public defender does not act under color of state law when performing a lawyer’s traditional functions as counsel to a defendant in a criminal case).

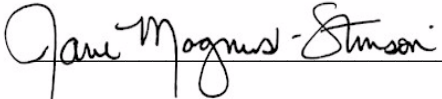
The plaintiff shall have **through July 30, 2014**, in which to show cause why Judgment consistent with this Entry should not issue. *See Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1022 (7th Cir. 2013) (“Without at least an opportunity to amend or to respond to an order to show cause, an IFP applicant’s case could be tossed out of court without giving the applicant any timely notice or opportunity to be heard to clarify, contest, or simply request leave to amend.”).

**IT IS SO ORDERED.**

Date: 06/26/2014

Distribution:

James Henley  
150168

  
Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

Miami Correctional Facility  
3038 West 850 South  
Bunker Hill, IN 46914